2385.

SUPREME COURT OF THE UNITED STATES.

No. 75.

HIRAM CLEARWATER, PL'FF IN ER.,

vs.

SOLOMON MEREDITH, PLEASANT JOHNSON, AND THOMAS TYNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the (11th) eleventh day of June, in the year of our Lord one thousand eight hundred and fifty-seven, that being the (22d) twenty-second judicial day of said May term for the year 1857. Present, the honorable Elisha M. Huntington, judge of the United States district court for the district of Indiana aforesaid.

HIRAM CLEARWATER,
vs.
PLEASANT JOHNSON, SOLOMON MEREDITH, and Thomas Tyner. } Assumpsit.

Be it remembered that heretofore, to wit, on the (18th) eighteenth day of March, in the year of our Lord eighteen hundred and fifty-seven, the plaintiff, by his attorneys, McDonald & Porter, filed in the clerk's office of said court the following, to wit:

HIRAM CLEARWATER, a citizen of the State of Ohio,
v.
PLEASANT JOHNSON, SOLOMON MEREDITH, and Thomas Tyner, citizens of the State of Indiana.

Assumpsit in the United States circuit court for the district of Indiana, May term, A. D. 1857.

The clerk of said court will please immediately issue a summons against the defendants in the above-entitled case, in a plea of assumpsit, lay the damages at 20,000 dollars, and make the writ returnable at the proper return day.

March 18, 1857.

McDONALD & PORTER,
Plaintiff's Att'ys.

And thereupon due process was issued by the clerk of said court, and delivered to the marshal of said district of Indiana, who duly returned the same, endorsed "served," as commanded in said writ, on said defendants.

And afterwards, to wit, on the 15th day of April, eighteen hundred and fifty-seven, the plaintiff by his attorneys filed in the clerk's office aforesaid his certain declaration against said defendants, in the words and figures following, to wit:

In the United States circuit court for the district of Indiana, May term, 1857.

INDIANA, *ss*:

Hiram Clearwater, a citizen of the State of Ohio, (plaintiff,) complains of Pleasant Johnson, Solomon Meredith, and Thomas Tyner, citizens of the State of Indiana, (defendants,) in custody, &c., of a plea of trespass on the case on promises: for that, in the district of Indiana, on the 12th day of July, 1853, the said defendants, together with one Caleb B. Smith, who, at the time of the commencement of this suit, was not a citizen of the State of Indiana, and is therefore not joined as a defendant herein, made and delivered to the plaintiff their certain written agreement with him of that date, by which written agreement, after reciting therein that the plaintiff had, on the 6th day of May, 1853, contracted with the Cincinnati, Cambridge, and Chicago Short Line Railway Company for the sale of a tract of land to said company, situate in Wayne county, Indiana, lying on the National Road, about 4 miles east of Cambridge city, and adjoining the lands of John Jacobs and others, containing 320 acres, for the consideration of 10,000 dollars, to be paid in the capital stock of said company at par, and that on such contract of sale it had been agreed that said company should furnish to the plaintiff a guaranty that *that* the capital stock of said company should be at par within one year from the completion of the entire line of said road; the defendants, with said Smith, then and there guarantied and promised to the plaintiff, in consideration that he had, at their request, and with the consent of the said railroad company, executed a deed of conveyance of said land to said Solomon Meredith, to whom the same had been sold by said company, that the stock which had been issued to said plaintiff by said company, in pursuance of said contract between the plaintiff and said company, should be worth par in the city of Cincinnati within one year from the time when said railroad should be completed from Cincinnati, in the State of Ohio, to New Castle, in the State of Indiana, and that said road should be so completed within two years from the first day of October, 1853.

And the plaintiff says that the stock last aforesaid, at the time of the making of said guaranty and promise, was and ever since has been 200 shares of the capital stock of said company, at 50 dollars per share, and the same then was and still is evidenced by a certificate of said shares of stock, duly issued under the corporate seal of said company, signed by the president and secretary thereof, and dated May 26th, 1853. And the plaintiff further avers that said road was not completed from Cincinnati, in the State of Ohio, to New Castle, in the State of Indiana, within two years from the first day of October, 1853, and has never since been so completed; that the entire line of said road is not now and never was completed; that said stock, at the end of one year from the first day of

October, 1855, was not, nor was it ever before or since, nor is it now, worth par in the city of Cincinnati, and was not then and there, and never has been there, worth five cents on the dollar thereof—of all which the defendants and said Smith had then and there notice; but they have wholly failed and refused to perform their promise and guaranty aforesaid.

And also for that heretofore, to wit, on the 12th day of July, 1853, the plaintiff had bargained but not conveyed to the Cincinnati, Cambridge, and Chicago Short Line Railroad Company, for ten thousand dollars in the capital stock of said company, a certain tract of 320 acres of land, situate in Wayne county, Indiana, on the National Road, about 4 miles east of Cambridge city, adjoining the lands of one John Jacobs and others, which ten thousand dollars of capital stock had, at the time of said bargain, to wit, on the 26th day of May, 1853, been duly issued by said company to the plaintiff in a certificate of 200 shares of said stock, at 50 dollars per share, which certificate was and is in due form, under the corporate seal of said company, signed by the president and secretary thereof, and now here to the court shown, whereby it was and is certified that the plaintiff was and is the owner of said 200 shares of stock. And the said Solomon Meredith, knowing the premises, then and there purchased from said company the interest held by said company, by virtue of said bargain with the plaintiff, in said land; and the said company and said Solomon Meredith thereupon (together with said other defendants and said Smith) requested the plaintiff to convey said land to the said Meredith, instead of said company, which the plaintiff thereupon, in consideration of the promise and guaranty by the defendants and said Smith made in the writing hereinafter copied, promised to do, and did, then and there, to wit, on the 12th day of July, 1853, perform. In consideration of which premises the defendants then and there executed and delivered to the plaintiff the writing of which the following is a copy, to wit:

"Whereas Hiram Clearwater, of the city of Cincinnati, on the 6th day of May, 1853, contracted with the Cincinnati, Cambridge, and Chicago Short Line Railway Company for the sale of a tract of land situate in Wayne county, Indiana, lying on the National Road, about four miles east of Cambridge city, and adjoining the lands of John Jacobs and others, containing three hundred and twenty acres, for the consideration of ten thousand [dollars,] to be paid in the capital stock of said company at par; and whereas in such contract of sale it was agreed that said company should furnish to said Clearwater a guaranty that the capital stock of said railway company should be at par within one year from the completion of the entire line of said road: Now, in consideration that the said H. Clearwater has, with the consent of the said company, and at our request, executed a deed of conveyance to Solomon Meredith for said land, (to whom the same has been sold by the said company,)

we, the undersigned, hereby guaranty that the stock of said company which has been issued to said Clearwater in pursuance of said contract shall be worth par in the city of Cincinnati within one year from the time the said railroad shall be completed from Cincinnati to New Castle, Indiana, and that said road shall be completed within two years from the first day of October, 1853. Witness our hands this the first day of October, 1853.

PLEASANT JOHNSON, *R. E. A.*
S. MEREDITH,
CALEB B. SMITH,
THOMAS TYNER."

And the plaintiff says that the land, the stock, and the company first above in this count mentioned are the same land, stock, and company mentioned in the writing above copied. The plaintiff avers that the said road was not completed within two years from the first day of October, 1853; that neither the entire line of said road, nor the portion of the road lying between Cincinnati and New Castle aforesaid, was completed within two years from the first day of October, 1853; that neither the entire line of said road, nor so much thereof as lies between Cincinnati and New Castle, has ever, at any time before the bringing of this suit, been completed; that at no time within one year next after the first day of October, 1855, was said stock worth par at the city of Cincinnati; that during one year next after the first day of October, 1855, said stock was constantly far below par, to wit 95 cents below par; and that at all times from the day of the execution of the writing above copied till the time of the commencement of this suit the said stock so issued to the plaintiff as aforesaid was and now is below par, to wit, 95 cents below par, and worth no more than five cents on the dollar thereof.

And the plaintiff says that the defendants, with said Smith, have in manner and form aforesaid broken and not kept their said promises and guaranties, and have wholly failed and refused (though often thereof notified and thereunto requested) to indemnify or in any manner save harmless the plaintiff, in regard to the promises in this declaration above mentioned, nor have they, or any of them, or said Smith, paid the plaintiff anything on account of said breaches of the promises aforesaid, nor paid the plaintiff the difference between the real value (at the time of said breaches of said promises and guaranties) of said stock and its estimate at par—to the damage of the plaintiff in the sum of 20,000 dollars; wherefore he sues, &c.

McDONALD & PORTER,
Pltff's Att'ys.

And afterwards, to wit, at a circuit court begun and holden at Indianapolis, in the district aforesaid, before the honorable John McLean, one of the Associate Justices of the Supreme Court of the

United States, and the honorable Elisha M. Huntington, judge as aforesaid, comes now the plaintiff, by his attorneys, and on his motion the defendants are ruled to plead on or before the (26th) twenty-sixth day of this present month.

And day is given.

And afterwards, to wit, on the (29th) twenty-ninth day of May, in the year eighteen hundred and fifty-seven, that being the (11th) eleventh judicial day of said May term for 1857, present the said judges as aforesaid, come now the parties, and the defendant files the following plea, to wit:

The said defendants, by counsel, come and say the declaration of the said plaintiff, and the several counts therein contained, are severally insufficient in law to enable said plaintiff to have and maintain his action against said defendants, and for cause of demurrer shows to the court the following:

1. The jurisdiction of the court is not shown by proper averment.
2. No sufficient consideration is shown for the undertaking.
3. The several counts do not contain facts sufficient to constitute a cause of action.

Wherefore the defendants pray judgment, &c.

SMITH, TEST, MORTON,
For Defendants.

And the plff. says that said declaration, and the several counts therein contained, are sufficient in law. Wherefore, &c.

McDONALD & PORTER,
For Plff.

And day is given the parties.

And afterwards, to wit, on the 13th judicial day of the same May term as aforesaid, present the said judges as last aforesaid, now come the parties, and after argument of counsel being heard, the court give the parties further day, to hear their decision thereon.

And afterwards, to wit, on the (22d) twenty-second judicial day of the same May term aforesaid, present the honorable Elisha M. Huntington, judge as aforesaid, come now the parties, by their attorneys, and the court being sufficiently advised in the premises, sustains the demurrer heretofore filed.

It is therefore considered by the court that said declaration of said plaintiff is not sufficient in law for the plaintiff to have and maintain his action as aforesaid against the defendants; that the plaintiff take nothing by his writ; and that the defendants go hence without day, and recover of the plaintiff their costs and charges herein in this behalf laid out and expended, taxed at

Know all men by these presents, that the undersigned are held and firmly bound unto Solomon Meredith, Pleasant Johnson, and

Thomas Tyner, in the sum of five hundred dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 12th day of June, 1857.

Whereas Hiram Clearwater has prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered by the circuit court of the United States for the district of Indiana, at its May term, 1857, in a cause in which said obligees were the defendants and said Hiram Clearwater was plaintiff:

Now, therefore, the condition of this obligation is such, that if the said Hiram Clearwater shall prosecute said writ of error to effect, and answer all costs on failure so to prosecute said writ of error, then this bond shall be void, else to remain in full force.

DAVID McDONALD, [SEAL.]
ALBERT G. PORTER, [SEAL.]

I approve the above bond.

E. M. HUNTINGTON, *Dist. Judge.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the seventh circuit and the district of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in said circuit court for the district aforesaid, between Hiram Clearwater, (plaintiff,) and Solomon Meredith, Pleasant Johnson, and Thomas Tyner, (defendants,) a manifest error hath happened, to the great damage of the said Hiram Clearwater, as by his complaint appears: and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the seventh day of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what may be right, and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-first. [SEAL.]

H. BASSETT, *Clerk.*

The foregoing writ of error is allowed. June 12, 1857.

E. M. HUNTINGTON.

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UNITED STATES OF AMERICA, *ss:*

To Solomon Meredith, Pleasant Johnson, and Thomas Tyner:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Indiana, wherein Hiram Clearwater is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Elisha M. Huntington, one of the judges of the said circuit court for the district of Indiana, this 12th day of June, in the year of our Lord eighteen hundred and fifty-seven.

E. M. HUNTINGTON.

I acknowledge service of the above citation for the above-named defendants—the case not to be set down for hearing at the next term.

CALEB B. SMITH,
Att'y for Defdts.

Dec. 2, 1857.

HIRAM CLEARWATER,
vs.
SOLOMON MEREDITH, THOMAS TYNER, and Pleasant Johnson. } In error.

Hiram Clearwater, the above-named plaintiff in error, says that in the proceedings and judgment of the United States circuit court for the district of Indiana, of which the within and foregoing is a transcript, there is manifest error in this, to wit:

That the said circuit court sustained the within-named demurrer, and rendered final judgment thereon against said plaintiff in error, and in favor of said defendants in error; whereas said circuit court ought to have rendered judgment overruling said demurrer.

Wherefore the said plaintiff in error prays the Supreme Court of the United States that said judgment of said circuit court be in all things reversed, at the costs of the defendants in error.

McDONALD & PORTER,
Plff's Att'ys.

UNITED STATES,
District of Indiana, ss:

I, Horace Bassett, the clerk of the circuit court of the United States for the district of Indiana, certify that the within and foregoing is a true and perfect transcript of the record, proceedings, and judgment in the within mentioned case; that the foregoing is